Supreme Court, U.S.
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No. 86-1528

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

HARSH INVESTMENT CORP.,
Appellant,

v.

CITY AND COUNTY OF DENVER, *et al.*,
Appellees.

On Appeal from the Supreme Court, State of Colorado

REPLY TO BRIEF IN SUPPORT OF APPELLANT HARSH INVESTMENT CORP.

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FACTUAL BACKGROUND

This case is an appeal from the Colorado Supreme Court. Of the three appellants in the Colorado Supreme Court, only one, Harsh Investment Corp. ("Harsh"), has appealed to this Court. Harsh filed its Jurisdictional Statement on March 23, 1987. On April 10, 1987, the Clerk of this Court granted all appellees an extension of time up to and including May 20, 1987, to respond to Harsh's Jurisdictional Statement. Landmark Land Company, Inc. ("Landmark") and Southmoor Park Shopping, Inc. ("Shopping"), the other two appellants in the Colo-

rado Supreme Court, have now filed a Brief in Support of Appellant Harsh Investment Corp. ("Brief"), dated May 26, 1987.

ARGUMENT

The Brief is untimely and must be stricken. Under Supreme Court Rule 10.4, Landmark and Shopping are Appellees in this case. They are, therefore, bound by Rule 10.4, which requires briefs in support by May 20, 1987, the extended deadline set by the Clerk of the Court.

Moreover, the Brief raises no issues not presented in Harsh's Jurisdictional Statement. Rather, it repeats Harsh's suggestion that Denver should have followed rezoning procedures in enacting the Mountain View Ordinance, and erroneously implies that the Mountain View Ordinance is invalid because it is not a "comprehensive plan." Brief at 6.

First, the Mountain View Ordinance is a comprehensive, citywide plan. It protects views from eight peaks, located throughout Denver. Tr. at 344-46; Denver Municipal Code §§ 10-56 - 10-62.5. In addition, this Court has never held that as a matter of federal law, a city must follow zoning procedures to regulate the height of buildings. To the contrary, decisions concerning the character of height and bulk regulations are purely matters of local concern, *see Gorieb v. Fox*, 274 U.S. 603, 608 (1927), and this Court has upheld various non-zoning restrictions on the height and bulk of buildings. *E.g., Penn Central Transportation Company v. New York City*, 438 U.S. 104 (1978); *Gorieb v. Fox, supra*; *Welch v. Swasey*, 214 U.S. 91 (1909).

CONCLUSION

The Brief in Support of Appellant Harsh Investment Corp. is untimely and must be stricken. For the reasons stated herein and in the Motion to Dismiss or Affirm, the Court should dismiss this appeal or affirm the decision of the Colorado Supreme Court.

Respectfully submitted,

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June 15, 1987